

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

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|------------------------|---|---------------------------|
| STEVEN RICHARD HORNER, | § | |
| | § | |
| Plaintiff, | § | |
| VS. | § | CIVIL ACTION NO. C-07-336 |
| | § | |
| NATHANIEL QUARTERMAN, | § | |
| | § | |
| Defendant. | § | |

**MEMORANDUM OPINION AND ORDER GRANTING OPPOSED MOTION
FOR EXTENSION OF TIME**

Pending is respondent's opposed motion for an extension of time (D.E. 11).

Petitioner filed a response in opposition to the motion (D.E. 9, 12). Respondent's motion (D.E. 11) is granted.

Petitioner erroneously relies on the time period set forth in 28 U.S.C. § 2243. But this petition involves a challenge to a state-court criminal judgment, and is governed by Rule 4, Rules Governing Section 2254 Cases:

. . . If the petition is not dismissed, the judge must order the respondent to file an answer, motion, or other response within a fixed time, or to take other action the judge may order. . .

About the fixed time, the commentary to Rule 4 is instructive:

In the event an answer is ordered under Rule 4, the court is accorded greater flexibility than under § 2243 in determining within what time period an answer must be made. Under § 2243, the respondent must make a return within three days after being so ordered, with additional time of up to forty days allowed under the Federal Rules of Civil Procedure, Rule 81(a)(2) for good cause. In view of the widespread state of work overload in prosecutor's offices (see, e.g. *Allen*, 424 F.2d at 141), additional time is granted in some jurisdictions as a matter of course. Rule 4, which contains no fixed time requirement, gives the court the discretion to take into

account various factors such as the respondent's workload and the availability of transcripts before determining a time within which an answer must be made.

In view of the voluminous state court records and the numerous exhibits filed by petitioner, good cause exists to extend the time for respondent to file his response.

Moreover, petitioner has failed to demonstrate any prejudice he would suffer from the granting of a forty-day extension to file a response. The motion is GRANTED.

The response is due on or before **Friday, November 9, 2007.**

ORDERED this 16th day of October, 2007.


B. JANICE ELLINGTON
UNITED STATES MAGISTRATE JUDGE